IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 251 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as JJJJ : NO

JJJJ

Date of decision: 24/04/2000

ORAL JUDGEMENT

(per A.R. Dave, J.)

The Assistant Commissioner of Income-tax, (Circle 6(1), Ahmedabad, the appellant herein, has submitted in this appeal that the following 3 questions of law arise from the order dated 1.2.98 passed by the Income Tax Appellate Tribunal in ITA No. 4914/Ahd/96.

"1. Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 6,24,000/- in respect of sale of 5 flats?

2. Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to reconsider the issue afresh on the ground that the addition of Rs. 10 lacs being expenditure as recorded on reverse side of page 9 of annexure A1, was also a part of computation?

3. Whether the Appellate Tribunal is right in law and on facts in holding that since the revenue is treating the receipt of on money as income, a portion of the amount has to be considered as expenditure for earning the income and thereby deleting the disallowance of Rs. 5 lacs made for want of supporting evidence for centering expenses and Rs. 3.40 lacs for purchase of raw material?"

2. We have heard learned advocate Shri BB Naik appearing for the appellant and learned advocate Shri JP Shah appearing for the respondent assessee and have also perused the relevant orders passed by the concerned authorities.

3. Looking to the nature of questions raised before this court, we are of the view that no substantial question of law arises out of the order passed by the Tribunal.

4. So far as the first question is concerned, it appears that sale proceeds of 5 flats, which is subject matter of the said question, cannot be treated as income of the assessee for the period in question for the reason that, during the search there was no evidence with regard to sale of 5 flats and, therefore, addition of Rs. 6.24

lacs was rightly deleted by the Tribunal. It is not in dispute that at the time of search it was found that 40 flats were sold by the respondent assessee and the "on money" which was received by the respondent assessee was taxed by the appellant department. As there is no evidence with regard to sale of 5 flats referred to in the said question and as the appellant department could not show anything with regard to receipt of any amount towards sale proceeds of the said 5 flats during the period in question, in our opinion, no question of law arises.

5. So far as the second question is concerned, it pertains to reconsidering the expenditure allowed by the Assessing Officer to the tune of Rs. 10 lacs. No final decision has been taken by the Tribunal, but the Tribunal has only remanded the matter to the Assessing Officer for the purpose of reconsidering and to know whether the said amount of Rs. 10 lacs should be allowed as expenditure. In our opinion, no final decision has been taken by virtue of asking the Assessing Officer to reconsider the said issue and therefore it cannot be said that any question of law has arisen from the said issue.

6. So far as the third question is concerned, it pertains to appreciation of evidence because the Tribunal has allowed expenditure to the tune of Rs. 8.40 lacs on the basis of statement made by the main partner of the respondent assessee firm. At the time of search, the main partner of the firm had stated that a sum of Rs 5 lacs was spent as expenditure for having centering material and a sum of Rs. 3.40 lacs was spent for the purchase of raw material. The Assessing officer did not believe the statement and did not allow the expenditure but the Tribunal, on appreciation of evidence, allowed the said expenditure. Whether to allow a particular expenditure on the basis of material or evidence available with the authority, is a question of fact. In the circumstances, we are of the view that no question of law is involved even on the third question raised by the appellant authority.

7. In the circumstances, we are of the view that no question of law has arisen from the order of the Tribunal and therefore this appeal is dismissed with no order as to costs. Notice is discharged.

_____

(hn)